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BEFORE THE HEARINGS OFFICER

KLAMATH COUNTY, OREGON

In the Matter of a
REQUEST FOR A
CONDITIONAL USE PERMIT

CUP No. 30-82

for

ORDER

E.A. BIGBY and
LINDA RAJNUS

THIS MATTER having come on before the Hearings Officer on written motion to quash submitted by William Kennedy doing business as Lost River Ranch, by and through his attorney, William M. Ganong; and the Hearings Officer having reviewed said motion and the points and authorities submitted by attorney William M. Ganong as well as the points and authorities submitted by attorney Steven A. Zamsky on behalf of the applicants; and the Hearings Officer having submitted a letter dated September 2, 1982 setting forth his findings of fact and conclusions with regard to this matter, a copy of which is attached hereto and by this reference incorporated herein; and being fully advised in the premises, now, therefore,

IT IS HEREBY ORDERED that the above-mentioned motion to quash be and it hereby is denied.

DATED this 2nd day of September, 1982.

J. J. Spindor
JAMES J. SPINDOR
Hearings Officer for Klamath County

ORDER

September 2, 1982

14602

Mr. William M. Ganong
Attorney at Law
1151 Pine Street
Klamath Falls, Oregon 97601

Mr. Steve Zamsky
Attorney at Law
110 North Sixth, Suite 207
Klamath Falls, Oregon 97601

Re: Request for Conditional Use
Permit/Bigby and Rajnus
No. 30-82

Gentlemen:

The motion to quash filed by Mr. Ganong on behalf of William Kennedy doing business as Lost River Ranch is denied. With regard to the first ground raised by this motion, I believe the Oregon Aeronautics Division has the authority to grant the exceptions which have been made in this case concerning aircraft maintenance, flight instruction, sales of aircraft, and parking of aircraft by local residents. This hearings officer may then approve such exceptions, only if appropriate under the standards as set by the Klamath County Code. As to the argument that the above mentioned activities cannot be allowed under AU-5 zone since they are not conditional uses permitted in this zone, as can be seen by Sections 113.005 (C), 113.005 (D) and 113.020, these activities are not allowed as conditional uses, except in appropriate zones, when they are establishments "primarily engaged" in the respective activity. In this case, the applicant will not be "primarily engaged" in any of these activities, even if they are approved by this hearings officer.

With regard to the second ground raised in said motion to quash, I find that the activities requested by applicant do come within the definition of "development" as set out in Section 91.004-"D" of the Code. However, Policy No. 3 under the Agricultural goal states that development shall be "directed" onto Class V through VIII soils. This policy further states that Class I through IV soils shall be "avoided". This policy does not state that as a matter of law there can be no development on Class I through IV soils. Therefore, each case must be determined on an individual basis as to whether development on Class I through IV soils is appropriate.

J. J. Spindor

JAMES J. SPINDOR
Hearings Officer

STATE OF OREGON: COUNTY OF KLAMATH :ss

I hereby certify that the within instrument was received and filed for record on the 3 day of Nov A.D., 1982 at 9:03 o'clock A M, and duly recorded in Vol182, of Deeds on page 14601.

EVELYN BIEHN COUNTY CLERK

Fee \$ No Fee

by *J. M. [Signature]* Deputy